

EXHIBIT 15

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11

Case No.
01-01139 JKF
W.R. Grace & Co., et al.,

Debtors. (Jointly Administered)

X

* * * CONFIDENTIAL * * *

— — —
May 13, 2009
— — —

DEPOSITION of RICHARD FINKE, held
at the offices of Kirkland & Ellis, 655
Fifteenth Street, N.W., Washington, DC,
commencing at 9:32 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified Court
Reporter, License No. XI00825, and
Certified Realtime Reporter

— — —
MAGNA LEGAL SERVICES, LLP

7 Penn Center, 8th Floor
1635 Market Street
Philadelphia, PA 19103

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2 EXAMINATION

3

Witness Name

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16 EXHIBITS

EXHIBIT

DESCRIPTION

ID

17 Exhibit 1

Notice of Deposition of Debtors Pursuant to Rule 30(b)(6)

16

18 Exhibit 2

Document entitled W.R. Grace/Confirmation Hearing 30(b)(6) Deposition Notice

16

19 Exhibit 3

SEC Form 8-K

25

20 Exhibit 4

Exhibit 6 to Exhibit Book, 41 Asbestos Insurance Transfer Agreement

41

21 Exhibit 5

Exhibit 19 to Exhibit Book, Retained Causes of

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1 EXHIBITS

EXHIBIT

DESCRIPTION

ID

2

3 Exhibit 6

Exhibit 2 to Exhibit Book, 55 Asbestos PI Trust Agreement

55

4

5 Exhibit 7

Exhibit 4 to Exhibit Book, 55 Trust Distribution Procedures

55

6

7 Exhibit 8

First Amended Joint Plan of Reorganization

70

8 Exhibit 9

Exhibit 5 to Exhibit Book, 92 Schedule of Settled Asbestos Insurers Entitled to 524(g) Protection

92

9

10 Exhibit

Settlement Agreement

98

11 10

Bates stamped OB 1 through 33

33

12

13 Exhibit

Travelers/Allstate 30(b)(6) deposition notice

135

14 Exhibit

Travelers 30(b)(6) supplemental deposition notice

136

15

16 Exhibit

Grace/Aetna Asbestos Settlement Agreement dated May 22, 1996

149

17 Exhibit

Exhibit 25 to Exhibit Book, CMO for Class 7A Asbestos PD Claims

178

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<p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3</p> <p>4 Direction to Witness Not To Answer</p> <p>5 Page Line Page Line</p> <p>6 30 2 37 12</p> <p>7 37 17 39 8</p> <p>8 39 15 369 1</p> <p>9 Request For Production of Documents</p> <p>10 Page Line Page Line</p> <p>11 (None)</p> <p>12 Stipulations</p> <p>13 Page Line Page Line</p> <p>14 (None)</p> <p>15 Questions Marked</p> <p>16 Page Line Page Line</p> <p>17 (None)</p> <p>18 - - -</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 MS. HARDING: I just wanted</p> <p>2 to make a statement on the record</p> <p>3 that the debtors have designated</p> <p>4 Mr. Finke to answer certain</p> <p>5 appropriate questions related to</p> <p>6 certain 30(b)(6) topics.</p> <p>7 As we've indicated, Mr.</p> <p>8 Finke will be available for seven</p> <p>9 hours today. We've also designated</p> <p>10 Mr. Hughes and Mr. LaForce to</p> <p>11 answer other 30(b)(6) topic</p> <p>12 questions. We are hoping and</p> <p>13 expecting that the parties seeking</p> <p>14 to ask questions have coordinated</p> <p>15 so that we can end in seven hours</p> <p>16 and we think it's a reasonable</p> <p>17 expectation.</p> <p>18 The debtors have reviewed</p> <p>19 the deposition of Mr. Lockwood and</p> <p>20 agree, in essence, with Mr.</p> <p>21 Lockwood's answers with respect to</p> <p>22 how the Plan operates and so we</p> <p>23 think and are very hopeful that</p> <p>24 there will not be a need to go</p>
Page 11	Page 13
<p>1 RICHARD FINKE,</p> <p>2 having been sworn by the Notary</p> <p>3 Public of the States of New York</p> <p>4 and New Jersey, was examined and</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. BROWN:</p> <p>9 Q. Good morning, Mr. Finke.</p> <p>10 My name is Michael Brown. I represent One</p> <p>11 Beacon, Seaton, Geico and Republic for the</p> <p>12 objecting insurance companies in the Grace</p> <p>13 bankruptcy. You've been deposed several</p> <p>14 times before, correct?</p> <p>15 A. Yes, I have.</p> <p>16 Q. Okay. So we can dispense</p> <p>17 with the formalities of what a</p> <p>18 deposition's all about?</p> <p>19 A. Yes, we can.</p> <p>20 Q. Okay.</p> <p>21 MS. HARDING: Michael,</p> <p>22 would you mind if I made a quick</p> <p>23 statement on the record?</p> <p>24 MR. BROWN: Sure.</p>	<p>1 further than seven hours to get to</p> <p>2 the appropriate inquiry as to how</p> <p>3 the Plan operates. So I just</p> <p>4 wanted to get that on the record.</p> <p>5 MR. BROWN: Okay.</p> <p>6 Actually, that's helpful. Maybe I</p> <p>7 could follow up with a question for</p> <p>8 Mr. Finke.</p> <p>9 Q. Mr. Finke, have you</p> <p>10 reviewed Mr. Lockwood's Rule 30(b)(6)</p> <p>11 deposition transcript?</p> <p>12 A. Yes, I have.</p> <p>13 Q. Okay. Is there anything</p> <p>14 that you read in that transcript that you</p> <p>15 disagreed with?</p> <p>16 A. No, nothing of substance.</p> <p>17 Q. Okay. How about anything</p> <p>18 not of substance?</p> <p>19 A. There are a few occasions,</p> <p>20 I think, where I either would have worded</p> <p>21 something differently or where I think Mr.</p> <p>22 Lockwood may have been either in error --</p> <p>23 might have been in error depending on</p> <p>24 whether he was -- depending on the</p>

1 context. Let me give you one example of
2 that.

3 **Q. Sure.**

4 A. He, I think, made a
5 statement at one point where he equated
6 asbestos in place coverage or insurance
7 coverage with the asbestos insurance
8 reimbursement agreements. I believe he
9 said he thought they were the same thing,
10 and perhaps in substance or in concept
11 they are. I'm not an insurance lawyer,
12 but I know that under the Plan
13 definitionally the definition of asbestos
14 (sic) in place insurance coverage
15 specifically excludes asbestos
16 reimbursement agreements from the
17 definition.

18 **Q. Okay.**

19 A. Which would suggest they
20 are not the same.

21 **Q. All right. I'm going to**
22 **suggest that Miss Alcabes, or one of the**
23 **people whose issue that is, may want to**
24 **follow up with you on that point.**

1 A. Sure.

2 **Q. But let's pass on that.**

3 **Other than what you've just**
4 **described, is there anything else in Mr.**
5 **Lockwood's deposition transcript that the**
6 **debtors disagreed with?**

7 A. Nothing that comes to
8 mind.

9 MR. BROWN: Okay. Let me
10 have the first exhibit marked, and
11 can we go off the record for a
12 second.

13 (Off the record.)

14 (Notice of Deposition of
15 Debtors Pursuant to Rule
16 30(b)(6) marked for identification
17 as Exhibit Finke-1.)

18 (Document entitled W.R.
19 Grace/Confirmation Hearing 30(b)(6)
20 Deposition Notice marked for
21 identification as Exhibit
22 Finke-2.)

23 BY MR. BROWN:

24 **Q. Mr. Finke, I'm going to put**

1 **before you two exhibits marked -- we're**
2 **using the term Finke 30(b)(6) 1 and Finke**
3 **30(b)(6) 2. For shorthand during the**
4 **deposition I'll just refer to them as**
5 **Finke-1 and Finke-2. Could you identify**
6 **Finke-1 for me, please?**

7 A. It is a Notice of
8 Deposition of Debtors Pursuant to Rule
9 30(b)(6) served by One Beacon, Seaton,
10 Geico and Columbia.

11 **Q. Going forward, it would be**
12 **more accurate to refer to Columbia as**
13 **Republic. I know it says Columbia there.**
14 **The date on here is April 28th, 2009 and**
15 **the site is Drinker Biddle & Reath's**
16 **offices but we obviously changed those by**
17 **agreement after this was scheduled.**

18 **Is it your understanding that**
19 **you're appearing here today in response to**
20 **this Rule 30(b)(6) notice?**

21 A. Yes.

22 **Q. And there were several**
23 **others served on you as well?**

24 A. Correct.

1 **Q. Correct, all right.**

2 **If you look at what's been marked**
3 **as Finke-2, can you identify that for**
4 **me?**

5 A. It is a chart 18 pages long
6 entitled W.R. Grace/Confirmation Hearing
7 30(b)(6) Deposition Notice Witness
8 Designations.

9 **Q. Okay. And is it your**
10 **understanding that this document was**
11 **prepared by your counsel?**

12 A. Yes, that's my
13 understanding.

14 **Q. And have you seen it before**
15 **today?**

16 A. Yes.

17 **Q. Okay. And am I correct**
18 **that it basically lists all the various**
19 **topics from all the 30(b)(6) notices that**
20 **were served on Grace and then designates**
21 **one of, I believe, three individuals to**
22 **testify about the various topics?**

23 A. I would agree that it
24 includes all 30(b)(6) notices that have

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<p>1 been served as of the time that the chart 2 was created.</p> <p>3 MS. HARDING: And I just 4 want to just object to the extent 5 that Exhibit 2 does not include the 6 cover letter that accompanied 7 Attachment A which also set out our 8 objections with respect to the 9 30(b)(6) notices.</p> <p>10 I have no objection to him 11 answering questions about it; I 12 just wanted to make clear on the 13 record that there was a cover 14 letter that accompanied that.</p> <p>15 MR. COHN: Which I actually 16 have but I didn't --</p> <p>17 MR. BROWN: Can we just go 18 off the record a second? 19 (Off the record.)</p> <p>20 BY MR. BROWN:</p> <p>21 Q. Mr. Finke, when we were 22 just off the record, we were discussing 23 another document, a copy of which I do not 24 have and apparently no one else does,</p>	<p>1 the road of having all the people 2 in this room ask questions about 3 negotiations and draft documents 4 only to draw objections and 5 instructions not to answer.</p> <p>6 Can we have that same 7 arrangement for this deposition 8 with the understanding that if 9 there subsequently is a ruling by a 10 court that entitles us to discovery 11 on those subjects that the witness 12 would be recalled for that purpose?</p> <p>13 MS. HARDING: Subject to 14 Judge Fitzgerald ordering the 15 debtors to submit and answer 16 questions to those, then we can 17 have that agreement, yes.</p> <p>18 MR. COHN: Just for my 19 clarity, in all of these 20 depositions we're talking about the 21 relevance objection instruction 22 that was asserted at Lockwood's 23 deposition that I clarified on the 24 record?</p>
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<p>1 which was described as being objections to 2 the various 30(b)(6) notices that were 3 served on the debtors. Are you familiar 4 with the document that I'm describing?</p> <p>5 A. No, I don't think I am.</p> <p>6 Q. Okay. In any event, you're 7 appearing here today pursuant to the Rule 8 30(b)(6) notices for the topics for which 9 you've been designated on Finke-2 and 10 subject to whatever objections were 11 asserted by the debtors, correct?</p> <p>12 A. Correct.</p> <p>13 MR. BROWN: Okay. We don't 14 have a document, but my 15 recollection of the objections was 16 that there was an objection to this 17 witness testifying about any Plan 18 negotiations or draft Plan 19 documents. Is that right, Barbara?</p> <p>20 MS. HARDING: That's 21 correct.</p> <p>22 MR. BROWN: Okay. At Mr. 23 Lockwood's deposition we reached an 24 agreement that we wouldn't go down</p>	<p>1 MR. BROWN: That is 2 correct, and I believe the document 3 that we don't have, the objections 4 to the 30(b)(6)'s, if I recall 5 correctly, had a paragraph setting 6 forth that objection and a number 7 of different decisions by Judge 8 Fitzgerald in other cases.</p> <p>9 MS. HARDING: That's 10 correct, and it relates -- our 11 objection relates to the -- to the 12 relevance to the extent that the 13 questions seek information relating 14 to settlement negotiations, 15 drafting --</p> <p>16 MR. COHN: The 17 clarification that I thought that I 18 made earlier that I'll make clear 19 is still the clarification that 20 this is a relevance objection, or 21 are you asserting a privilege?</p> <p>22 MS. HARDING: Well, I 23 disagree with that 24 characterization. The objection is</p>

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<p>1 set out in our official objection 2 to the 30(b)(6) notices which is 3 filed on record. It includes 4 attorney-client privilege, it 5 includes work product, it includes 6 joint interest privilege. I don't 7 have it in front of me so I can't 8 recite them, but it includes much 9 more than relevance so -- 10 MR. COHN: Just to be 11 clear, because -- 12 MS. HARDING: With respect 13 to negotiations, you can -- there 14 will be other objections other than 15 just relevance, so -- 16 MR. COHN: Well, but my 17 understanding was there was a 18 blanket instruction not to answer 19 without any attempt to parse 20 through potential privilege 21 objections on the basis of a 22 blanket relevance objection. Am I 23 missing something? 24 MS. HARDING: I don't</p>	<p>1 negotiations of the Plan or the 2 draft Plan documents that that will 3 draw an instruction not to 4 answer. 5 MS. HARDING: That's 6 correct. 7 MR. BROWN: Okay, thank 8 you. 9 (SEC Form 8-K marked for 10 identification as Exhibit 11 Finke-3.) 12 BY MR. BROWN: 13 Q. Mr. Finke, you have before 14 you now another document that has been 15 marked for this deposition as Finke-3. 16 You'll note that there is a prior 17 deposition exhibit number on there, Number 18 12, and that was from your deposition as a 19 fact witness. Do you see that? 20 A. Yes, I do. 21 Q. We obviously had some 22 questioning about this at your prior 23 deposition but that was not in your 24 capacity as a designee for Grace and I</p>
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<p>1 disagree with that, but I think 2 that in light of the blanket 3 relevance objection with respect to 4 negotiations that there was that 5 agreement reached. That doesn't 6 mean that with respect to 7 everything that might fall under 8 negotiations that there wouldn't be 9 other objections as well. 10 MR. COHN: I'm not 11 suggesting that -- 12 MS. HARDING: Okay. 13 MR. COHN: -- if there's a 14 valid privilege objection here that 15 you've somehow waived your right to 16 assert that by asserting a blanket 17 objection, but my understanding is 18 we didn't start down that path 19 because there was a relevance 20 objection. 21 I'm sorry, Michael. 22 MR. BROWN: That's all 23 right. Suffice it to say that if 24 we ask questions concerning the</p>	<p>1 have some additional questions. So the 2 first one is: Can you identify the 3 document? 4 A. Yes. This is a Form 8-K 5 report that was filed by W.R. Grace with 6 the Securities and Exchange Commission on 7 April 6, 2008. 8 Q. And the document has a 9 couple of attachments, correct? 10 A. Yes. 11 Q. What are they? 12 A. Let's see. The first 13 attachment is, in essence, a press release 14 in which Grace announced the -- its 15 settlement of asbestos personal injury 16 claims in the context of the Chapter 11 17 cases and the second attachment is a term 18 sheet for resolution of asbestos personal 19 injury claims. 20 Q. And was the press release 21 actually issued? 22 A. I do not know. 23 Q. Okay. If it was issued, 24 was it issued on or about the time that</p>

1 this document was filed, to your
2 knowledge?

3 A. Yes.

4 Q. Let's focus on the term
5 sheet. Who are the parties to the term
6 sheet?

7 A. The debtors, the Official
8 Equity Security Committee, the Official
9 Committee of Personal Injury Claimants and
10 the Future Claimants' Representative.

11 Q. And what is the date of the
12 term sheet?

13 A. April 6, 2008.

14 Q. I want you to focus now on
15 the period -- for purposes of my next
16 series of questions -- the period prior to
17 April 6, 2008. And am I correct that
18 prior to April 6, 2008 that Grace did not
19 consult with any of its insurers
20 concerning the terms that appear in this
21 term sheet?

22 MS. HARDING: I'm going to
23 object to the extent that it seems
24 to me that this is going right into

1 the issue of negotiations and
2 settlement negotiations with
3 respect to the Plan. I thought we
4 weren't going to go there.

5 MR. COHN: I think there
6 was no -- if there was no contact,
7 how are we going into that?

8 MR. BROWN: Yeah, we ought
9 to see what his answer is. I'm not
10 asking him about negotiations with
11 the parties that signed the term
12 sheet. I'm asking about whether
13 Grace consulted with any of its
14 insurers concerning the terms of
15 the term sheet prior to executing
16 it.

17 MS. HARDING: First of all,
18 I'm going to object. I think that
19 the -- this is not a topic of the
20 30(b)(6) notice and we're prepared
21 to answer questions about how the
22 Plan operates. I think that that's
23 what Judge Fitzgerald would
24 instruct the debtors to do and

1 we're here to do that.

2 We're not here to talk
3 about and have the witness testify
4 about how it was negotiated, how it
5 came about, the prior drafts, who
6 was consulted, who wasn't
7 consulted, and all that. I don't
8 think that's the proper scope of
9 this deposition.

10 MR. BROWN: I'm not asking
11 who was consulted. I'm asking him
12 whether the insurers -- I'm asking
13 him to affirm that the insurers
14 were not consulted.

15 MS. HARDING: Right. But
16 the problem with that is if we
17 answer that question, then we have
18 opened the door to answering that
19 question with respect to any party
20 and I think that that's not the
21 proper subject of this
22 deposition.

23 MR. BROWN: I can assure
24 you the only one I'm going to ask

1 about is the insurers.

2 MS. HARDING: Well, I
3 understand that you are, but I
4 don't want to spend any of the time
5 of the seven hours talking about
6 any of the negotiations or what led
7 up to the drafting of the document.
8 We didn't agree to that. It wasn't
9 asked for in the 30(b)(6) topics
10 with respect to how the term sheet
11 came about and so I think that
12 we've got an agreement.

13 If you all want to seek an
14 order compelling us to answer those
15 kinds of questions, then I think
16 you should do that. Otherwise,
17 we're here to talk about how the
18 Plan operates. So --

19 MR. BROWN: I thought you
20 just --

21 MS. HARDING: That's what
22 he's here to answer questions
23 about.

24 MR. BROWN: Are you

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1 instructing him not to answer?

2 MS. HARDING: I'm
3 instructing him not to answer
4 because I think it leads into a
5 series of questions that we all
6 have already agreed is not proper
7 under the current law.

8 MR. COHN: Oh, wait, wait,
9 wait, wait, wait.

10 MR. BROWN: I'm not
11 sure --

12 MS. HARDING: Actually, I
13 understand that you don't agree
14 with the law, but we've agreed for
15 purposes of this deposition that we
16 weren't going to do that.

17 MR. BROWN: I don't know
18 that we agreed to any such thing.
19 I asked the same series of
20 questions of Mr. Lockwood. I don't
21 know if you were at his deposition
22 or not --

23 MS. HARDING: I was.

24 MR. BROWN: -- but he

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1 relevance?

2 MS. HARDING: I think
3 that's an appropriate scope of the
4 objection.

5 MR. COHN: On the basis of
6 relevance?

7 MS. HARDING: On the basis
8 of all of the objections that were
9 stated in our objection to the
10 30(b)(6) notice --

11 MR. COHN: No, I want you
12 to state on the record --

13 MS. HARDING: Let me
14 finish.

15 MR. COHN: -- here and now
16 what the basis for a yes or no
17 question of whether or not people
18 were consulted. If there was no
19 communication, there's no arguable
20 privilege and I want the basis now
21 because I think we are going to
22 litigate this.

23 MS. HARDING: Well, I
24 think --

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1 answered those questions and he
2 left open in his answers about
3 whether Grace had discussed with
4 its insurers these topics and
5 that's why I'm asking these
6 questions. It was perfectly fine
7 when I asked them of Mr. Lockwood;
8 he answered them and so should this
9 witness.

10 MS. HARDING: Well, I
11 believe that I objected and I
12 wasn't the person defending Mr.
13 Lockwood. And Mr. Lockwood --
14 that's between him and his counsel.
15 I'm Mr. Finke's counsel. I'm
16 instructing Mr. Finke not to answer
17 questions relating to how the
18 settlement -- how the term sheet,
19 the Plan or any of the documents
20 related to it were drafted or put
21 together and who was consulted and
22 who wasn't consulted and how that
23 came about.

24 MR. COHN: On the basis of

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1 MR. BROWN: I think I have
2 the floor on this, but thank you,
3 Jack.

4 I think we have a
5 disconnect between what constitutes
6 negotiations. I'm not asking him
7 about how this was negotiated
8 between these parties. I
9 understand your position on that.
10 I'm simply asking whether Grace
11 consulted with its insurers with
12 regard to any term that appears in
13 the term sheet prior to executing
14 it on April 6, 2008. I don't think
15 that gets into negotiations at all.
16 In point of fact, I suspect he's
17 going to say no, in which case it
18 doesn't involve negotiations at
19 all.

20 MS. HARDING: Well, I
21 suggest this: I think that the
22 question "did you negotiate with
23 anyone" gets into that question.

24 MR. BROWN: That wasn't the

Page 34	Page 36
<p>1 question.</p> <p>2 MS. HARDING: Well, by</p> <p>3 asking him -- I think it does. I</p> <p>4 think we disagree about that. I</p> <p>5 think why don't we move forward.</p> <p>6 At a break I'm happy to talk about</p> <p>7 it further but right now I'm</p> <p>8 instructing him not to answer the</p> <p>9 questions.</p> <p>10 MR. BROWN: Well, I'll ask</p> <p>11 a series --</p> <p>12 MR. LEWIS: Hold on just a</p> <p>13 second. My name is Tom Lewis. I</p> <p>14 represent the Libby claimants, and</p> <p>15 I've never seen a deposition like</p> <p>16 this. I'm in practice 30 some</p> <p>17 years.</p> <p>18 I thought the examiner</p> <p>19 makes a question and if there's an</p> <p>20 objection, the objection is stated</p> <p>21 clearly as to that particular</p> <p>22 question and we don't sit here and</p> <p>23 debate for 15 or 20 minutes whether</p> <p>24 the question should be answered.</p>	<p>1 under 408. The objection</p> <p>2 relates -- the rules of the</p> <p>3 bankruptcy law do not require the</p> <p>4 debtors to answer questions</p> <p>5 relating to Plan negotiations and</p> <p>6 settlement with respect to their</p> <p>7 Plan and attorney-client privilege,</p> <p>8 work product and joint interest</p> <p>9 privilege.</p> <p>10 MR. BROWN: Okay.</p> <p>11 MR. COHN: Wait, I'm sorry.</p> <p>12 I don't mean to -- I would like to</p> <p>13 know with whom you assert a common</p> <p>14 interest exists.</p> <p>15 MS. HARDING: You know</p> <p>16 what? My objection's on the record</p> <p>17 and I'm not stating any more. I've</p> <p>18 instructed the witness not to</p> <p>19 answer and I think we should move</p> <p>20 forward.</p> <p>21 MR. BROWN: I think we</p> <p>22 should, too, and I'm going to say</p> <p>23 for purposes of stating your</p> <p>24 objections to this series of</p>
Page 35	Page 37
<p>1 I think we should proceed</p> <p>2 in a proper question and answer</p> <p>3 proceeding here or we're never</p> <p>4 going to get done and we're going</p> <p>5 to have an impossible record.</p> <p>6 So I object to the form of</p> <p>7 the examination and the failure of</p> <p>8 counsel for this witness to make a</p> <p>9 proper objection on the record of</p> <p>10 this deposition and I join in the</p> <p>11 objection that this gentleman to my</p> <p>12 right --</p> <p>13 MR. COHN: Mr. Cohn.</p> <p>14 MR. LEWIS: Thank you.</p> <p>15 MS. HARDING: I think I've</p> <p>16 stated the objection very clearly</p> <p>17 and I instruct the witness not to</p> <p>18 answer.</p> <p>19 MR. LEWIS: I disagree with</p> <p>20 that. I have not heard an</p> <p>21 objection on the record of this</p> <p>22 deposition.</p> <p>23 MS. HARDING: The objection</p> <p>24 is relevance. It's not relevant</p>	<p>1 questions let's just use the</p> <p>2 shorthand, you know, same as before</p> <p>3 so that we don't have to repeat</p> <p>4 it.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. Mr. Finke, I'm correct, am</p> <p>7 I not, that prior to signing this term</p> <p>8 sheet that we've been discussing that</p> <p>9 Grace did not obtain the consent of any of</p> <p>10 its insurers with respect to any of the</p> <p>11 terms in the term sheet?</p> <p>12 MS. HARDING: Same</p> <p>13 objection. Instruct the witness</p> <p>14 not to answer.</p> <p>15 Q. Why did Grace exclude its</p> <p>16 insurers?</p> <p>17 MS. HARDING: Same</p> <p>18 objection. Instruct the witness</p> <p>19 not to answer.</p> <p>20 Q. The initial Joint Plan, Mr.</p> <p>21 Finke, was filed on September 19th, 2008,</p> <p>22 correct?</p> <p>23 A. I believe that's correct.</p> <p>24 Q. Okay. And it included, did</p>

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<p>1 A. No, no, I'm not aware of 2 any general claims. I'm not aware of any 3 claims that I could identify with respect 4 to any given insurer. 5 MR. BROWN: Let's mark the 6 next exhibit, which will be the 7 Asbestos PI Trust agreement. 8 (Exhibit 2 to Exhibit Book, 9 Asbestos PI Trust Agreement marked 10 for identification as Exhibit 11 Finke-6.) 12 (Exhibit 4 to Exhibit Book, 13 Trust Distribution Procedures, 14 marked for identification as 15 Exhibit Finke-7.) 16 BY MR. BROWN: 17 Q. Okay. Mr. Finke, you have 18 before you Exhibits 6 and 7. Exhibit 6 -- 19 well, why don't you tell me if you can 20 identify both of those documents? 21 A. Exhibit 6 is the Asbestos 22 PI Trust agreement. I should say the 23 proposed Asbestos PI Trust agreement that 24 is also known as Exhibit 2 to the Exhibit</p>	<p>1 to look at a specific provision of 2 the policy or... 3 MR. BROWN: I'm just asking 4 the question I asked. 5 A. I don't know the answer to 6 your question. I'm not that familiar with 7 the two agreements to know whether these 8 two documents set forth the role of the 9 asbestos insurers with respect to the 10 handling, settlement, resolution, payment, 11 et cetera of asbestos PI claims. 12 In general, the Plan includes the 13 asbestos insurance coverage that is 14 transferred to the Trust to be available 15 to either pay asbestos PI claims or 16 reimburse the PI Trust for its payment of 17 claims. Sitting here today, I just -- I 18 do not recall to what extent, if any, 19 these two documents contain provisions 20 that relate to that role. 21 Q. Let me broaden the scope of 22 the question to not just these two 23 documents but the Plan or any of the Plan 24 documents. Would that change your</p>
Page 55	Page 57
<p>1 Book. Finke Exhibit 7 is the Trust 2 Distribution Procedures relevant to the 3 Asbestos PI Trust and also known as 4 Exhibit 4 to the Exhibit Book. 5 Q. Okay. What role, if any, 6 do either of those two documents 7 contemplate for Grace's insurers in the 8 handling, resolution, settlement, defense 9 of asbestos claims asserted against or 10 submitted to the Trust? 11 MS. HARDING: Object to the 12 form. 13 MR. LIESEMER: Object to 14 the form. 15 MS. HARDING: Could you 16 read back the question, please? 17 (The reporter reads the 18 pending question.) 19 MS. HARDING: Okay, and I 20 object to it as being overly broad 21 with respect to Grace's insurers 22 without reference to any particular 23 insurer or policy. And, Michael, 24 do you have -- are you asking him</p>	<p>1 answer? 2 MS. HARDING: Object to 3 form. 4 MR. LIESEMER: Join. 5 A. I thought I just answered 6 that question so maybe I don't understand 7 the question. 8 Q. Well, my initial question 9 to you focused on the two documents, the 10 Trust agreement and the asbestos PI TDP. 11 I'm asking the question more broadly now. 12 If you look at the Plan -- at all 13 the Plan documents, do any of them 14 contemplate any role for Grace's insurers 15 in the handling, defense, resolution, of 16 any asbestos PI claim submitted to the 17 asbestos PI Trust for resolution? 18 MS. HARDING: Object to 19 form. I think it's overly broad. 20 And by Plan, do you mean all of the 21 exhibits, including all of the 22 documents and policies listed in 23 exhibits? 24 MR. BROWN: I'm using the</p>

term "Plan" and "Plan documents" as defined in the Plan.

MR. LIESEMER: Object to the form of the question.

A. The Plan certainly contains provisions that posit a role for the asbestos insurers to act as a source of funds for payment of asbestos PI claims and reimbursement of asbestos PI claims paid by the Trust. In terms of the insurers' role in handling or defense, et cetera, of -- in connection with asbestos PI claims, it is my understanding that the insurers' role is whatever it is under the policies and that that role is -- remains the same notwithstanding the transfer of the asbestos insurance rights to the Trust.

Q. Would you look at pages 43 and 44 of the Trust agreement, which I think is 6.

A. Yes.

MS. HARDING: 43, did you say? What page?

MR. BROWN: Yes. Bear with me one second here.

THE WITNESS: 43 and 44.

MR. BROWN: 43 and 44, yes.

Q. Do you see on pages 43 and 44 there are some gentlemen listed as members of the TAC?

A. Yes.

Q. Do you know any of those gentlemen?

A. I have met Mr. Cooney, Mr. Rice and Mr. Weitz. I have not had much contact with them, though.

Q. What do you understand to be their professional background, the three you met?

A. They are attorneys. They have represented asbestos personal injury plaintiffs in litigation against Grace and other defendants.

Q. Do you have any idea as to how many claims each of these gentlemen's firms has asserted on behalf of claimants against Grace?

MR. LIESEMER: Object to the form of the question.

A. No.

MS. HARDING: You're asking him personally? Is that what you mean, personally? I mean, W.R. -- well, you ask him.

Q. Do you know whether -- let's try it a different way.

Mr. Cooney. Mr. Cooney is with the firm of Cooney & Conway, correct?

A. That's my understanding, yes.

Q. How many clients does Cooney & Conway have with asbestos claims against Grace, to your knowledge?

MR. LIESEMER: Object to the form.

MS. HARDING: Objection just because of the relevance, but go on.

A. I don't know.

Q. Would your answer be the same for the other gentlemen?

A. Yes.

Q. The TAC members, there's four individuals listed there. They were selected by the ACC, correct?

A. That is my understanding, yes.

Q. And the ACC is made up of a collection of asbestos personal injury claimants, the actual committee, correct?

MS. HARDING: Object to the form.

A. That is my understanding.

Q. Is it your understanding that those individual asbestos claimants delegate their responsibilities as ACC members to their personal injury counsel?

A. It's my understanding that their counsel often act on the claimants' behalf in connection with the business of the ACC.

Q. Okay.

A. Whether there's any

1 delegation, I wouldn't know.

2 **Q. Okay. Does each of the**
3 **firms that's listed on pages 43 and 44 --**
4 **just for the record, Baron & Budd, PC;**
5 **Cooney & Conway; Motley Rice, LLC and**
6 **Weitz & Luxenberg -- do each of those**
7 **firms have a client who's a member of the**
8 **ACC?**

9 A. I don't recall.

10 **Q. What do you understand to**
11 **be the role of the asbestos PI T-A-C, or**
12 **TAC, in connection with the Asbestos PI**
13 **Trust?**

14 MS. HARDING: Object to the
15 form of the question.

16 A. To provide advice to the
17 Trust with respect to the matters set
18 forth in the Trust agreement and the
19 TDP.

20 **Q. Do they owe any fiduciary**
21 **duties to -- in their role as members of**
22 **the TAC?**

23 MS. HARDING: Objection to
24 form.

1 **correct?**

2 A. Yeah, well, specifically
3 Section 5.2 states that "the members of
4 the TAC shall serve in a fiduciary
5 capacity representing all holders of
6 present PI Trust claims."

7 **Q. Okay. Do you have any**
8 **further understanding as to what the**
9 **nature of the fiduciary duties is that**
10 **they owe to all holders of present PI**
11 **Trust claims?**

12 MS. HARDING: Object to
13 form.

14 A. I'm afraid I do not
15 understand your question.

16 **Q. I'll try to rephrase it**
17 **then.**

18 **What are the fiduciary duties that**
19 **the TAC members owe to holders of PI Trust**
20 **claims?**

21 MR. LIESEMER: Object to
22 form.

23 MS. HARDING: Same
24 objection.

1 MR. LIESEMER: Object to
2 form.

3 MS. HARDING: Calls for a
4 legal conclusion.

5 A. I don't know. Offhand, I
6 could look it up in the documents to see
7 if the documents ascribe such a duty to
8 them.

9 **Q. Why don't you look at**
10 **Section 5.2.**

11 A. Of which?

12 **Q. The Trust agreement.**

13 MS. HARDING: So Exhibit 2
14 of the Plan but Exhibit 6?

15 MR. BROWN: Correct.

16 THE WITNESS: Finke Exhibit
17 6.

18 **Q. Does Section 5.2 refresh**
19 **your recollection as to whether the**
20 **members of the TAC have any fiduciary**
21 **duties in connection with their role as**
22 **TAC members?**

23 A. Yes.

24 **Q. Okay. And they do,**

1 MR. LEWIS: I object as to
2 foundation.

3 A. I am not able to identify
4 specific duties. As a fiduciary they're
5 obligated to act in the best interests of
6 the holders of present PI Trust claims.

7 **Q. And when you say holders,**
8 **you mean all holders of present --**

9 A. Yes.

10 **Q. -- PI Trust claims?**

11 A. Yes.

12 **Q. And all holders includes**
13 **holders of PI Trust claims that are not**
14 **clients of TAC members' respective law**
15 **firms, correct?**

16 A. It includes them, yes.

17 **Q. Now, in the role of**
18 **personal injury counsel for their**
19 **individual clients, they have a separate**
20 **set of fiduciary duties, correct?**

21 MS. HARDING: Object to
22 form and also calls for a legal
23 conclusion and outside the scope of
24 the designation of this 30(b)(6)

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1 witness, I believe, but...

2 MR. LIESEMER: Join in the
3 objections.

4 THE WITNESS: I'm sorry.
5 Can you read the question again?
6 (The reporter reads the
7 pending question.)

8 A. They have fiduciary
9 obligations to their clients, yes.

10 **Q. Okay. And to your**
11 **knowledge, do those fiduciary duties**
12 **differ from -- that is, the duties that**
13 **they owe to their respective clients --**
14 **differ from the fiduciary duties that each**
15 **of these TAC members has in their role as**
16 **a TAC member?**

17 MR. LIESEMER: Objection to
18 form.

19 MS. HARDING: Same
20 objection as I had to the previous
21 question.

22 A. In general, they owe the
23 same obligation to fulfill the role of a
24 fiduciary, which is to act in the best

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1 interests of their clients. Whether there
2 are specific duties in their role as TAC
3 members that are different from specific
4 duties in their role as counsel
5 representing their clients, I don't
6 know.

7 **Q. Do you have an**
8 **understanding as to how the TAC members**
9 **will deal with the situation where the**
10 **best interests of their individual clients**
11 **differs from the best interest of all**
12 **holders of present PI Trust claims?**

13 MS. HARDING: Object to
14 form.

15 MR. LIESEMER: Objection to
16 form.

17 MS. HARDING: Calls for
18 speculation.

19 A. I don't know.

20 **Q. Is there any mechanism in**
21 **any of the Plan documents, to your**
22 **knowledge, that addresses that issue?**

23 MS. HARDING: Object to
24 form.

1 A. I am not aware of any.

2 **Q. Okay. Now, you're familiar**
3 **with the term "PI Trust claims" as it's**
4 **used in the Trust agreement, correct?**

5 MR. LIESEMER: Objection to
6 form.

7 A. Yes, I am.

8 **Q. And if you look at Footnote**
9 **1 to the Trust agreement, if you would,**
10 **Footnote 1 says that what is defined as**
11 **asbestos PI claims in the plan will be**
12 **referred to as PI Trust claims in the**
13 **Trust agreement, correct?**

14 A. Yes.

15 **Q. And are you familiar with**
16 **the scope of the defined term "asbestos PI**
17 **claims" as it appears in the Plan?**

18 A. Yes.

19 **Q. I'm correct, am I not, that**
20 **it includes the term "indirect PI Trust**
21 **claim"?**

22 A. Yes.

23 **Q. So based on that**
24 **definitional connection, is it fair to say**

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1 **that Mr. Weitz, Mr. Cooney, Mr. Budd**
2 **and -- I missed someone -- Mr. Budd, Mr.**
3 **Cooney, Mr. Rice and Mr. Weitz are**
4 **fiduciaries to the holders of indirect PI**
5 **Trust claims?**

6 MS. HARDING: Object to
7 form.

8 MR. LIESEMER: Join in the
9 objection.

10 A. I believe that to be
11 correct.

12 **Q. Are you generally familiar**
13 **with my client, OneBeacon's, contractual**
14 **indemnity claims?**

15 A. No.

16 **Q. Okay, we'll get to that**
17 **later then.**

18 MR. BROWN: Let's mark this
19 next.

20 (First Amended Joint Plan
21 of Reorganization marked for
22 identification as Exhibit
23 Finke-8.)

24 **Q. Mr. Finke, you have before**

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1 you now what has been marked as Exhibit 8
2 to this deposition and what is Exhibit 1
3 to the Exhibit Book. First question is:
4 Would you identify the document, please?

5 A. Yes. I think Exhibit 8 is
6 the First Amended Joint Plan of
7 Reorganization that was filed by Grace and
8 its co-proponents.

9 Q. Okay.

10 A. And the date is February --
11 date on the document is February 27,
12 2009.

13 Q. Okay. Have you reviewed
14 this document in its entirety?

15 A. Yes.

16 Q. How many times?

17 MS. HARDING: You mean in
18 its entirety how many times?

19 MR. BROWN: Well, let's
20 start-up with that question.

21 A. Interpreting review as
22 meaning a detailed word-for-word reading
23 of the entire document, I would say
24 once.

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1 Q. Okay. And how many times
2 have you partially reviewed the
3 document?

4 A. Many times.

5 Q. Okay. Do you understand
6 it?

7 A. I have an understanding of
8 it. I would not profess to have a
9 complete understanding of it.

10 Q. Okay. Are there particular
11 provisions in the Plan that you're quite
12 certain you don't understand?

13 MS. HARDING: Object to
14 form and relevance and concern that
15 we're not going to the seven
16 hours -- I mean, if you have a
17 specific question about a specific
18 provision that you don't understand
19 as an insured, then I think you
20 should ask him questions about
21 that. I think...

22 MR. BROWN: Is that an
23 instruction not to answer the
24 question?

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1 MS. HARDING: No, it's
2 not.

3 MR. BROWN: Okay. It's
4 just --

5 MS. HARDING: It's just an
6 objection that...

7 A. I'm sure that I do not
8 understand the annex or annexes that I
9 believe relate to tax issues.

10 MS. HARDING: I guess --
11 are you asking him in his personal
12 capacity?

13 MR. BROWN: I don't think
14 he's here in his personal capacity.
15 I think he's here in his capacity
16 as a designee for W.R. Grace or for
17 the debtors.

18 MS. HARDING: Okay. Are
19 you asking him if there's anybody
20 at W.R. Grace that has an
21 understanding of different
22 provisions of the Plan as lawyers
23 and --

24 MR. BROWN: I think he's

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1 here to testify about the operation
2 of the Plan. I think that was --
3 isn't he? So my question is
4 what --

5 MS. HARDING: He's here to
6 answer questions to help you
7 understand the Plan.

8 MR. BROWN: Barbara, can
9 we --

10 MS. HARDING: So I think if
11 there are questions that you don't
12 understand, I think you should ask
13 him those.

14 MR. BROWN: I would like to
15 know whether there are particular
16 provisions in the Plan that the
17 witness can identify that he is not
18 familiar with or that he doesn't
19 understand.

20 MS. HARDING: Well, I think
21 he's asked and answered, so...

22 A. Yes, for myself there are
23 provisions that I do not understand, such
24 as the tax annexes. This --

1 MS. HARDING: Which also
2 were not designated 30(b)(6) topics
3 by any person who --

4 MR. BROWN: Can I ask that
5 we just let the witness answer the
6 question?

7 MS. HARDING: Well, I think
8 if you want to ask him questions
9 about topics that were designated
10 that you asked him to become
11 familiar with, then --

12 MR. BROWN: I didn't ask
13 him a question about the tax annex.
14 It was in his answer.

15 MS. HARDING: Well, that's
16 because you asked him about any
17 provision of the Plan. You
18 asked -- we tried to prepare the
19 witness to answer questions about
20 topics that everybody asked about.

21 MR. BROWN: All right.
22 I'll ask my question again. If you
23 have an objection and you want to
24 instruct him not to answer, then do

1 your attention to page 87 of the Plan,
2 Section 7.15, and what I would like you to
3 do, because I have a series of questions
4 about it, is why don't you take a few
5 moments to review Section 7.15. In fact,
6 if you want to take a break at this
7 point --

8 MR. BROWN: Does that make
9 sense? Okay.

10 MS. HARDING: Well, I mean,
11 how long is it, again?

12 THE WITNESS: Seven
13 pages.

14 MS. HARDING: Five-minute
15 break?

16 MR. BROWN: That's fine,
17 yes.

18 (Recess taken.)

19 BY MR. BROWN:

20 **Q. Mr. Finke, we had a short**
21 **break and before that I directed your**
22 **attention to Section 7.15 of the Plan**
23 **entitled Insurance Neutrality. Did you**
24 **have an opportunity to review that section**

1 it and we'll move on.

2 BY MR. BROWN:

3 **Q. Mr. Finke, as you sit here**
4 **today looking at the Joint Plan, can you**
5 **identify particular provisions that you do**
6 **not understand?**

7 MS. HARDING: Object, asked
8 and answered, but answer one more
9 time if you'd like.

10 A. In addition to what I've
11 already identified, the provision on the
12 warrants is not entirely clear to me. And
13 if I spent the time to go through the
14 document page by page, there may be a few
15 other sections that I don't feel very
16 comfortable with in terms of the level of
17 my understanding.

18 Speaking on behalf of W.R. Grace as
19 a whole, there are individuals who
20 understand those sections and, taken as a
21 whole, I think W.R. Grace does have a good
22 understanding of the Plan.

23 **Q. Okay. Well, let me take**
24 **your counsel up on her offer and direct**

1 during the break?

2 A. Yes.

3 **Q. This was not one of the**
4 **sections that you mentioned in your prior**
5 **testimony that you were -- that you did**
6 **not understand. Is it safe to say that**
7 **this is a provision that you do**
8 **understand? And I'm asking that question,**
9 **really, in your capacity as an individual**
10 **and as the designee on this subject for**
11 **the debtors.**

12 MS. HARDING: Object to
13 form.

14 A. Yes, I believe I understand
15 it.

16 **Q. Okay. Can you turn to**
17 **Section 11.9 of the Plan, and that's**
18 **entitled Exculpation, and if you'd take a**
19 **moment to review that section.**

20 (The witness reviews the document.)

21 A. Okay.

22 **Q. Given the language in**
23 **Section 7.15, am I correct that asbestos**
24 **insurance entities are not bound by the**

1 about or been asked about the scenario
2 you're describing.

3 **Q. But if the claim is**
4 **asserted by the insurers against Fresenius**
5 **Medical Care Holdings, it's being asserted**
6 **against a non-debtor, correct?**

7 MS. HARDING: Object to
8 form.

9 A. In the first instance,
10 yes.

11 **Q. And that would then take it**
12 **outside the definition of indirect PI**
13 **Trust claims which by definition have to**
14 **be against the debtor, right?**

15 MS. HARDING: Just object
16 to form in terms of the
17 hypothetical. I'm not sure where
18 we are in the hypothetical, but go
19 ahead.

20 A. Well, I understand what
21 you're saying and, yes, if you were to
22 stop right there I would agree with you.
23 But when you add in what I think is a
24 fact, which is that Grace would owe an

1 indemnification obligation to FMCH in
2 those circumstances, the reality of your
3 hypothetical is that the claim would
4 be ultimately a claim against the
5 debtors.

6 **Q. So is it your testimony on**
7 **behalf of Grace that the claim I've**
8 **described, running from the insurers**
9 **against Fresenius, that is in fact an**
10 **indirect PI Trust claim?**

11 MS. HARDING: Object to
12 form.

13 MR. LIESEMER: Object to
14 form.

15 A. That is my view, yes.

16 **Q. Is it also your view that**
17 **that claim would be an indemnified insurer**
18 **TDP claim as described in Section 5.13 of**
19 **the TDP?**

20 MS. HARDING: Same
21 objection.

22 MR. LIESEMER: Object to
23 form.

24 A. Yes, it does appear to fit

1 the definition or description of an
2 indemnified insured TDP claim.

3 **Q. Okay. Let me ask you this**
4 **then: What is the operative injunction in**
5 **the Plan that accomplishes both the**
6 **enjoining and channeling of the claim that**
7 **we're talking about; namely, a claim for**
8 **contractual indemnity running from the**
9 **insurers against Fresenius Medical Care**
10 **Holdings, Inc.?**

11 A. The --

12 MS. HARDING: Object to
13 form.

14 MR. LIESEMER: Object to
15 form.

16 A. The asbestos PI channeling
17 injunction.

18 **Q. Does the successor claims**
19 **injunction in the Plan also enjoin the**
20 **claim?**

21 MR. LIESEMER: Object to
22 form.

23 MS. HARDING: Object to
24 form to the extent we're still

1 talking about the hypothetical.

2 A. No, I don't believe so.

3 **Q. All right, I want to ask**
4 **you now, Mr. Finke, a sort of more broad**
5 **question. Class 6 includes, among other**
6 **things, individual asbestos claimants'**
7 **claims against Grace, correct?**

8 MS. HARDING: Object to
9 form.

10 MR. LIESEMER: Join.

11 A. Did you say asbestos claims
12 or asbestos PI claims?

13 **Q. I'm using it generically.**
14 **Fair enough, that's a fair -- the**
15 **purpose -- Grace has been sued in a number**
16 **of asbestos personal injury claims,**
17 **correct?**

18 A. Yes.

19 **Q. Okay. And those claims,**
20 **among other claims, are classified as**
21 **Class 6 under the Plan, right?**

22 A. Yes.

23 **Q. And indirect PI Trust**
24 **claims that we've just been discussing,**

1 **they're also Class 6 claims, correct?**

2 A. Correct.

3 **Q. And indemnified insurer TDP**
4 **claims are also Class 6 claims, correct?**

5 A. I believe so but I'm going
6 to go back and reread the definition
7 again.

8 **Q. Okay.**

9 **(The witness reviews the document.)**

10 A. Yes.

11 **Q. Can you describe for me the**
12 **factual basis for putting all of those**
13 **claims in the same class?**

14 MS. HARDING: Object to
15 form. Calls for -- to the extent
16 that it calls for a legal
17 conclusion and --

18 A. I would refer to the --

19 THE WITNESS: I'm sorry.

20 MS. HARDING: -- and
21 attorney-client work product
22 privileges to the extent that they
23 apply. But if you can still
24 answer, go ahead.

1 A. My answer would be to refer
2 to the terms of the Plan and the
3 definitions. The definitions of asbestos
4 PI claims would incorporate the factual
5 basis of those claims.

6 **Q. All right. I'm asking a**
7 **broader question, I think, Mr. Finke, and**
8 **I'm not asking for a legal conclusion.**

9 MS. HARDING: Okay.

10 And --

11 **Q. I'm asking for what is it**
12 **that's factually similar about these**
13 **claims that warrants in the debtor's view**
14 **placing them all into Class 6.**

15 MS. HARDING: Object to
16 form.

17 MR. LIESEMER: Object to
18 form.

19 MS. HARDING: Foundation
20 and it...

21 A. I may be misunderstanding
22 your broad question, but I have to again
23 respond by referring to the factual
24 circumstances laid out in the definition

1 of asbestos PI claims. It is those --
2 those set of circumstances that result in
3 all of these claims being classified as
4 Class 6 claims.

5 **Q. What are the similarities**
6 **between the claims; that is, between the**
7 **personal injury claims and the contractual**
8 **indemnity claims, if any?**

9 MS. HARDING: Object to
10 form.

11 MR. LIESEMER: Object to
12 form.

13 A. Assuming you're referring
14 to contractual indemnity claims arising
15 out of, directly or indirectly, an
16 asbestos PI claim, the similarity is that
17 the underlying claim is by a person who
18 alleges -- and I'm just paraphrasing
19 because I don't want to read this entire
20 definition -- but alleges that he has
21 contracted an asbestos-related disease due
22 to exposure to asbestos from a Grace
23 product or operation.

24 **Q. Anything else?**

1 MS. HARDING: Object to
2 form.

3 A. I don't understand your
4 question.

5 **Q. My question is: Is there**
6 **any other basis for classifying the**
7 **contractual indemnity claims that we've**
8 **just been discussing with the personal**
9 **injury claims, the asbestos personal**
10 **injury claims?**

11 MS. HARDING: Object to
12 form.

13 A. The basis I've laid out for
14 the definition of asbestos PI claims.

15 **Q. Okay. Mr. Finke, why are**
16 **contractual indemnity claims arising from**
17 **the asbestos claims that you just**
18 **described placed into Class 6 while other**
19 **contractual indemnity claims against Grace**
20 **are placed into Class 9?**

21 MS. HARDING: Object to
22 form and to the -- and object to
23 the extent it calls for a legal
24 conclusion. If you can answer, go

31 (Pages 118 to 121)

Page 118	Page 120
<p>1 ahead.</p> <p>2 A. Because the contractual</p> <p>3 indemnity claims that arise based out of</p> <p>4 an asbestos PI claim all seek to impose</p> <p>5 liability upon the debtors as a result of</p> <p>6 the debtors' asbestos-related products or</p> <p>7 operations.</p> <p>8 Q. Okay. Is Fresenius a</p> <p>9 separate entity from any of the debtors</p> <p>10 today?</p> <p>11 MS. HARDING: Object to</p> <p>12 form.</p> <p>13 Q. Separate legal entity.</p> <p>14 A. Yes.</p> <p>15 Q. How about Sealed Air</p> <p>16 Corporation? Is that a separate legal</p> <p>17 entity?</p> <p>18 A. Yes.</p> <p>19 Q. And they're both</p> <p>20 non-debtors, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Are they -- do they have</p> <p>23 separate -- does Fresenius and the debtors</p> <p>24 have separate management?</p>	<p>1 Q. Do any of the debtors</p> <p>2 control Fresenius?</p> <p>3 A. No.</p> <p>4 Q. Do any of the debtors</p> <p>5 control Sealed Air?</p> <p>6 A. No.</p> <p>7 MR. BROWN: How did we mark</p> <p>8 the transfer agreement?</p> <p>9 MS. BAER: The insurance</p> <p>10 transfer agreement is Exhibit 4.</p> <p>11 (Off the record.)</p> <p>12 BY MR. BROWN:</p> <p>13 Q. We talked about this</p> <p>14 earlier. Can you take a look at Schedule</p> <p>15 1 to Exhibit 4?</p> <p>16 A. Yes.</p> <p>17 Q. My question is: Does</p> <p>18 Fresenius have any rights under the</p> <p>19 policies listed on Schedule 1?</p> <p>20 MS. HARDING: Object to</p> <p>21 form.</p> <p>22 A. I don't believe so.</p> <p>23 Q. How about Sealed Air?</p> <p>24 A. I don't believe so.</p>
Page 119	Page 121
<p>1 A. Yes.</p> <p>2 Q. And would your answer be</p> <p>3 the same with respect to Sealed Air and</p> <p>4 the debtors?</p> <p>5 A. Yes.</p> <p>6 Q. Does Fresenius and the</p> <p>7 debtors or do Fresenius and the debtors</p> <p>8 have any shared operations?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Do Sealed Air and the</p> <p>11 debtors have any shared operations?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. Do any of the debtors have</p> <p>14 any ownership interest in Fresenius?</p> <p>15 MS. HARDING: Object to</p> <p>16 form.</p> <p>17 A. I don't know but I'm not</p> <p>18 aware of any.</p> <p>19 Q. Do any of the debtors have</p> <p>20 any ownership interest in Sealed Air?</p> <p>21 MS. HARDING: Same</p> <p>22 objection.</p> <p>23 A. Again, I don't know but I'm</p> <p>24 not aware of any.</p>	<p>1 MR. BROWN: Why don't we</p> <p>2 take a five-minute break. I may be</p> <p>3 finished.</p> <p>4 MS. HARDING: Okay.</p> <p>5 (Recess taken.)</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Mr. Finke, I have a few</p> <p>8 more questions for you and then I'll pass</p> <p>9 you along to the next questioner.</p> <p>10 Can you take a look at Section 11.9</p> <p>11 of the Plan again? That's the exculpation</p> <p>12 provision.</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand the scope</p> <p>15 of the exculpation provision in terms of</p> <p>16 the entities and individuals that are</p> <p>17 actually exculpated under this</p> <p>18 provision?</p> <p>19 MS. HARDING: Object to</p> <p>20 form.</p> <p>21 A. Yes, I believe I do.</p> <p>22 Q. Okay. Well, let me give</p> <p>23 you a couple of examples. It's includes</p> <p>24 the Asbestos PI Committee, correct?</p>

1 A. Yes.

2 Q. And we talked a little
3 about the Asbestos PI Committee being
4 individual asbestos claimants, correct?

5 A. Yes.

6 Q. And you testified that, by
7 and large, they perform their duties as
8 committee members through their asbestos
9 personal injury counsel, correct?

10 A. Correct.

11 Q. Okay. And that would
12 include, among other individuals, Mr. Rice
13 and his law firm, correct?

14 A. Yes, I believe that's
15 right.

16 Q. And Mr. Cooney and his law
17 firm?

18 A. Well, I guess what I don't
19 know is which of the -- which of the
20 asbestos plaintiffs' attorneys we've
21 identified are -- or have clients that are
22 members of the committee. I just don't
23 recall.

24 Q. Okay, fair enough.

1 There are also -- the TAC is within
2 the scope of this exculpation provision,
3 correct?

4 A. Yes.

5 Q. So it would include the TAC
6 members, Mr. Weitz, Mr. Cooney, Mr. Budd
7 and Mr. Rice, correct?

8 A. Correct.

9 Q. And to the extent that the
10 firms -- to extent that any members of the
11 Asbestos PI Committee are represented by
12 the firms of Mr. Cooney, Mr. Rice, Mr.
13 Weitz and Mr. Budd, they too would be
14 covered by it, correct?

15 A. Correct.

16 MS. HARDING: Object to
17 form.

18 Q. All right. Now, about
19 halfway down the provision it has a phrase
20 that says "or any of their respective
21 Representatives". Do you see that?

22 A. Yes.

23 Q. And Representatives is in
24 initial cap R, correct?

1 A. Yes.

2 Q. Why don't you go to the
3 defined term Representatives which appears
4 at 33 of the Joint Plan. It's definition
5 number 177.

6 MS. HARDING: I think I
7 lost the line of -- did you
8 previously ask if the TAC was
9 covered --

10 MR. BROWN: Yes.

11 MS. HARDING: -- by the
12 exculpation in 11.9?

13 MR. BROWN: Yes.

14 MS. HARDING: I'm just
15 looking and I don't see that so I
16 just wanted to make sure that the
17 record wasn't unclear.

18 MS. BAER: Barbara.

19 MR. BROWN: Asbestos PI
20 Trust Advisory Committee.

21 MS. HARDING: All right.

22 MR. BROWN: We're happy to
23 have it taken out.

24 MS. HARDING: No, no. I

1 was talking because I was going too
2 fast and I just didn't see it and I
3 wanted to make sure.

4 A. Okay.

5 Q. Sitting here today and
6 looking at the defined term
7 Representatives and seeing its use in
8 Section 11.9 of the Plan, do you have any
9 idea of the scope of this exculpation
10 provision in terms of who's covered by
11 it?

12 MS. HARDING: Object to
13 form.

14 A. Well, certainly the
15 definition of Representatives gives me an
16 idea as to the scope of the exculpation
17 provision.

18 Q. Okay. But I mean the
19 actual identities of the individuals, you
20 couldn't -- you couldn't give me a list
21 today, could you?

22 A. No.

23 Q. Okay.

24 A. I could not.

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1 **Q. Do you have any idea who**
 2 **the advisors or consultants are of Mr.**
 3 **Cooney's firm or Mr. Weitz's firm or Mr.**
 4 **Rice's firm or --**

5 A. No.

6 MS. HARDING: Object to
 7 form.

8 A. No, I do not.

9 **Q. Okay. How does the court**
 10 **know if it confirms this Plan who all's**
 11 **covered by the exculpation provision,**
 12 **given the breadth of the definition of**
 13 **Representatives?**

14 MS. HARDING: Object to
 15 form --

16 MR. LIESEMER: Object to
 17 form.

18 MS. HARDING: -- to the
 19 extent it calls for a legal
 20 conclusion.

21 A. I would be speculating that
 22 perhaps they'll be -- those individuals
 23 would be identified to the court at some
 24 point, but I don't know.

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1 **Q. Do you know how far back**
 2 **the exculpation provision goes in terms of**
 3 **time?**

4 A. No, because it's -- it's
 5 not set up to be framed in terms of a
 6 beginning date and an end date. It's --
 7 the scope of the provision relates to
 8 conduct in connection with or arising out
 9 of the Chapter 11 cases so that, to my
 10 understanding, that could encompass
 11 conduct before the Chapter 11 cases were
 12 commenced, conduct afterwards.

13 **Q. How long before it was**
 14 **commenced?**

15 MS. HARDING: Object to
 16 form.

17 A. The provision does not
 18 say.

19 MR. BROWN: Okay. All
 20 right. I think with that I'm going
 21 to pass you along to Miss Alcabes,
 22 and I may -- I'll reserve the right
 23 for any follow-up questions after
 24 the others have finished. Thank

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1 you.

2 THE WITNESS: You're
 3 welcome.

4 EXAMINATION BY
 5 MS. ALCABES:

6 **Q. Good afternoon, Mr. Finke.**
 7 **My name is Elisa Alcabes. I'm counsel for**
 8 **Travelers Casualty & Surety Company.**
 9 **We've met before.**

10 A. Yes.

11 **Q. Can you just tell me what**
 12 **you did to prepare for your deposition**
 13 **today?**

14 A. I reviewed the Plan; a
 15 number of the exhibits to the Plan, some
 16 more than once; met with counsel, Grace's
 17 bankruptcy counsel, to discuss various
 18 provisions of the Plan and related
 19 documents. I'm trying to think if there
 20 is anything else. Read the deposition
 21 transcript of Peter Lockwood and listened
 22 to the -- listened in on the deposition of
 23 Jeff Posner which I viewed as preparation
 24 for this deposition. That's all I can

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1 recall at this point.

2 **Q. About how much time did you**
 3 **spend with Grace's bankruptcy counsel**
 4 **preparing?**

5 A. About 15 hours.

6 **Q. And you said you listened**
 7 **in on the Posner deposition. Do you agree**
 8 **with the testimony that Mr. Posner**
 9 **provided?**

10 MS. HARDING: Object to
 11 form.

12 A. Yes, I do. I can't think
 13 of anything that I disagreed with so I
 14 would say, in general, yes.

15 **Q. And you said previously**
 16 **that you generally agreed with the**
 17 **deposition testimony of Mr. Lockwood as**
 18 **well, correct?**

19 A. Correct.

20 **Q. You mentioned that there**
 21 **was one point in his deposition where he**
 22 **seemed to have equated coverage in place**
 23 **with the reimbursement agreements. Is**
 24 **that right.**

WR GRACE & CO NEW

Filing Date: 04/06/08

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT

TO SECTION 13 OR 15(D) OF THE

SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) April 6, 2008

W. R. GRACE & CO.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

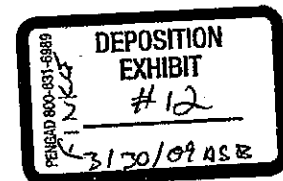
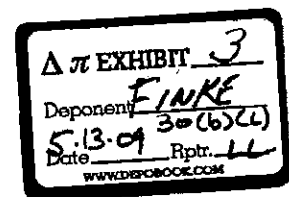
(Commission File Number)
7500 Grace Drive

1-13953

(IRS Employer Identification No.)
65-0773649
21044

Columbia, Maryland
(Address of Principal Executive Offices) (Zip Code)

(410) 531-4000



W R GRACE & CO NEW

Filing Date: 04/06/08

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

W. R. GRACE & CO.

FORM 8-K

W R GRACE & CO NEW

Filing Date: 04/06/08

CURRENT REPORT

Item 7.01. Regulation FD Disclosure.

On April 6, 2008, W. R. Grace & Co., on behalf of itself and its subsidiaries and affiliates that are debtors in the Chapter 11 cases, (the "Company") entered into an agreement in principle (the "Agreement") with the Official Committee of Asbestos Personal Injury Claimants, the Future Claimants Representative and the Official Committee of Equity Security Holders, all parties-in-interest in the Company's Chapter 11 case, that would settle all present and future asbestos-related personal injury claims against the Company on the terms and conditions set forth therein. Certain terms and conditions of the Agreement are described in the press release attached hereto as Exhibit 99.1. The description of the terms and conditions of the Agreement is qualified in its entirety by reference to the provisions of the Agreement attached hereto as Exhibit 99.2.

The information furnished pursuant to this Item 7.01, including Exhibit 99.1 and Exhibit 99.2, shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), or otherwise subject to the liabilities of such section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

99.1 Press Release

99.2 Term Sheet for Resolution of Asbestos Personal Injury Claims dated as of April 6, 2008

W R GRACE & CO NEW

Filing Date: 04/06/08

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed by the undersigned, thereunto duly authorized.

W. R. GRACE & CO.
(Registrant)
By /s/ Mark A. Shelnitz
Mark A. Shelnitz
Secretary

Dated: April 7, 2008

W R GRACE & CO NEW

Filing Date: 04/06/08

Exhibit 99.1

Grace News #2919

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GRACE ANNOUNCES SETTLEMENT OF ASBESTOS PERSONAL INJURY CLAIMS

COLUMBIA, Maryland, April 7, 2008 -- W. R. Grace & Co. (NYSE: GRA) today announced an agreement in principle that would settle all present and future asbestos-related personal injury claims. The agreement, reached with the Official Committee of Asbestos Personal Injury Claimants, the Future Claimants Representative and the Official Committee of Equity Security Holders, requires the following assets to be paid into a trust to be established under Section 524(g) of the United States Bankruptcy Code:

Cash in the amount of \$250 million;

Warrants to acquire 10 million shares of Grace common stock at an exercise price of \$17.00 per share, expiring one year from the effective date of a plan of reorganization;

Rights to proceeds under Grace's asbestos-related insurance coverage;

The value of cash and stock under the litigation settlement agreements with Sealed Air Corporation and Fresenius Medical Care Holdings, Inc.; and

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Deferred payments at \$110 million per year for five years beginning in 2019, and \$100 million per year for ten years beginning in 2024; the deferred payments would be obligations of Grace backed by 50.1% of Grace's common stock to meet the requirements of Section 524(g).

The agreement in principle contemplates the filing of a plan of reorganization and related documents with the Bankruptcy Court. The plan will be subject to approval of its co-proponents, exit financing, and Bankruptcy Court and District Court approvals.

"This agreement in principle is a very important step in emerging from Chapter 11," said Fred Festa, Grace's Chairman, President and Chief Executive Officer. "In this challenging global marketplace, we need to be able to focus all of our efforts on increasing shareowner value and continued improvement in our core businesses. The agreement and the Plan of Reorganization that will be based on it will be good for our shareholders, customers, creditors, and our employees. A lot of work remains to be done before we can confirm a Plan of Reorganization, but I am optimistic we will be successful in reaching that goal by the end of this year or early in 2009."

1

"Also, I want to point out that the Plan of Reorganization will preserve all employee benefits. During the seven years we have been in Chapter 11, our people have nearly doubled Grace's sales and dramatically improved the core businesses. We look forward to final approval of our Plan of Reorganization when we can once again operate without the constraints of Chapter 11," said Festa.

* * * * *

Grace is a leading global supplier of catalysts and other products to petroleum refiners; catalysts for the manufacture of plastics; silica-based engineered and specialty materials for a wide-range of industrial applications; sealants and coatings for food and beverage packaging, and specialty chemicals, additives and building materials for commercial and residential construction. With annual sales of more than \$3.1 billion, Grace has about 6,500 employees and operations in over 40 countries. For more information, visit Grace's web site at www.grace.com.

W R GRACE & CO NEW

Filing Date: 04/06/08

* * * * *

This announcement contains forward-looking statements, that is, information related to future, not past, events. Such information generally includes the words "believes," "plans," "intends," "targets," "will," "expects," "anticipates," "continues" or similar expressions. For these statements, Grace claims the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Grace is subject to risks and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements or that could cause other forward-looking information to prove incorrect. Factors that could cause actual results to materially differ from those contained in the forward-looking statements include: Grace's bankruptcy, plans of reorganization proposed by Grace and others, Grace's legal proceedings (especially the Montana criminal proceeding and environmental proceedings), the cost and availability of raw materials and energy, Grace's unfunded pension liabilities, costs of environmental compliance, risks related to foreign operations, especially, security, regulation and currency risks and those factors set forth in Grace's most recent Annual Report on Form 10-K, quarterly report on Form 10-Q and current reports on Form 8-K, which have been filed with the Securities and Exchange Commission and are readily available on the Internet at www.sec.gov. Reported results should not be considered as an indication of future performance. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date thereof. Grace undertakes no obligation to publicly release any revisions to the forward-looking statements contained in this announcement, or to update them to reflect events or circumstances occurring after the date of this announcement.

###

Corporate Communications

W. R. Grace & Co.-Conn.

7500 Grace Drive

Columbia, MD 21044

W R GRACE & CO NEW

Filing Date: 04/06/08

Exhibit 99.2

W. R. GRACE & CO., et al.
CASE NO. 01-1139 (JFK)

TERM SHEET FOR RESOLUTION OF
ASBESTOS PERSONAL INJURY CLAIMS

This Term Sheet sets forth certain of the principal terms and conditions under which the Debtors, the Official Equity Security Committee, the Official Committee of Personal Injury Claimants ("ACC") and the Future Claimants Representative ("FCR") in the above-captioned Chapter 11 cases are prepared to file a plan of reorganization ("Plan") as co-proponents providing for the resolution of all asbestos personal injury claims and liabilities, including without limitation all asbestos personal injury claims pending at the filing date of the Chapter 11 cases and those arising subsequent thereto (collectively, "Asbestos PI Claims"). This Term Sheet also sets forth the proposed treatment of other key classes of claims asserted in the Chapter 11 cases. This Term Sheet has been produced for settlement purposes only and is subject to the provisions of Rule 408 of the Federal Rules of Evidence.

I. Treatment of Claims

A. Asbestos PI Trust

All Asbestos PI Claims will be channeled to a trust (the "Asbestos PI Trust") that is established in accordance with Section 524(g) of the United States Bankruptcy Code. The Asbestos PI Trust will pay claims from trust assets in accordance with a trust agreement and trust distribution procedures established by the ACC and FCR in connection with the Plan.

1. Funding of Asbestos PI Trust at Emergence. On the Effective Date of the Plan, the Asbestos PI Trust shall receive the following, each of which shall be a condition to the Plan becoming effective:

a. Cash Payment: \$250 million, plus, if the Effective Date occurs after December 31, 2008, interest from January 1, 2009 to the Effective Date accrued at the same rate applicable to Grace's senior debt.

b. Insurance: the assignment by W. R. Grace & Co.-Conn. ("Grace") and all of its affiliates to the Asbestos PI Trust, of all insurance policies and all insurance proceeds available for payment of Asbestos PI Claims, effective as of the Effective Date, including without limitation:

i. Any such proceeds from the date hereof of all settlements with insurance companies, and all interest accrued thereon;

ii. Any proceeds of the settlement with Equitas held in escrow with all interest accrued thereon;

iii. Any proceeds of all settlements with all insurance companies

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under coverage in place agreements or installment payment arrangements where payment has not yet occurred;

iv. Assignment of and the right to recover on all outstanding insurance policies potentially applicable to personal injury claimants; and

v. The right to recover from all insolvent insurance estates as to which Grace or its affiliates has made a claim and the proceeds of all payments received by Grace or its affiliates from those insolvent estates after the date hereof, and all interest accrued thereon.

Provided however that Grace is in the process of examining its policies and the foregoing will not affect Grace's separate coverages, if any, for losses not arising from asbestos personal injury claims.

The ACC and FCR (or, after the Effective Date, the Asbestos PI Trust) shall control (and Grace shall cooperate in connection with) any negotiations or legal proceedings related to the underlying policies or settlement agreements applicable to Asbestos PI Claims.

c. Warrant: a warrant for 10 million shares of W. R. Grace & Co. ("Parent") common stock, exercisable at \$17 per share, and expiring one year after the Effective Date.

d. Cryovac, Inc. Payment: The consideration contemplated by the Sealed Air Settlement Agreement.

e. Fresenius Medical Care Payment: The proceeds of the payment contemplated by the Fresenius Settlement Agreement.

2. Deferred Payment Obligations: Grace shall make additional payments to the Asbestos PI Trust over a 15 year period as follows: five annual payments of \$110 million commencing on January 2, 2019; and 10 annual payments of \$100 million commencing on January 2, 2024. Such payment obligations shall be subordinate to any bank debt or bonds outstanding and shall be guaranteed by Parent or any successor ultimate parent entity of Grace. Such guaranty shall be secured by an obligation of Parent to issue to the Asbestos PI Trust, in the event an additional payment is not made, the number of shares of Parent common stock which, when

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added to the number of shares of common stock issued and outstanding as of the Effective Date, shall constitute 50.1% of the voting shares of Parent as of the Effective Date (such number of shares shall be equitably adjusted for stock splits, stock dividends, recapitalizations, corporate reorganizations or changes in control of Parent after the Effective Date).

B. Other Classes

1. Administrative Claims: 100% of allowed amount in cash.
2. Priority Tax Claims: 100% of allowed amount in cash.
3. Priority Non-Tax Claims: 100% of allowed amount in cash.
4. Secured Claims: 100% of allowed amount either in cash or by reinstatement.
5. Unsecured Employee Claims (post-retirement health and special pension): 100% of allowed amount by reinstatement.
6. Workers Compensation Claims: 100% by reinstatement.
7. Allowed General Unsecured Claims: 100% of allowed amount plus

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post-petition interest as follows: (i) for holders of pre-petition bank credit facilities, post-petition interest at the rate of 6.09% from the filing date through December 31, 2005 and thereafter at floating prime, in each case compounded quarterly; and (ii) for all other unsecured claims, interest at 4.19%, compounded annually, or if pursuant to an existing contract, interest at the non-default contract rate.

8. Allowed Environmental Claims: 100% of allowed amount in cash.

9. Traditional Asbestos Property Damage Claims: 100% of allowed amount in cash for settled claims. The Plan shall set forth procedures for the allowance of all Asbestos PD Claims that are disputed as of the Effective Date.

10. ZAI Claims: Unless the Plan Proponents agree otherwise as to the treatment of ZAI Claims, the court shall estimate, for purposes of allowance and distribution, any liability on account of ZAI Claims prior to or in connection with the confirmation of the Plan. ZAI Claims shall be paid 100% of their allowed amount up to the amount of the court's estimate.

II. Channeling Injunctions. The Plan shall contain injunctions under Sections 524(g) and Section 105(a) of the Bankruptcy Code to protect the Debtors, Cryovac, Sealed Air, Fresenius, their affiliates, officers, directors and employees, and other parties in interest and certain insurers. The Plan shall also contain such provisions, injunctions and releases

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(i) as are necessary to comply with the terms of the Sealed Air Settlement Agreement and the Fresenius Settlement Agreement; and (ii) to the full extent permitted by law, to indemnify, and release all of Grace's officers, directors, employees and professionals, and the members of all official committees, the FCR and their professionals, from any liability on account of claims against Grace, or arising in or in connection with these Chapter 11 cases. The foregoing injunctions, indemnifications and releases shall be at least as extensive as, and consistent with, the injunctions, indemnifications and releases provided for under Grace's Amended Plan currently filed in the Chapter 11 Cases to the extent such latter injunctions, indemnifications and releases are not inconsistent with this Term Sheet.

III. Resolution of Outstanding Issues. The parties agree to cooperate in seeking a resolution of outstanding issues material to or not otherwise resolved in connection with the confirmation of a plan of reorganization.

IV. Binding Effect. This Term Sheet has been approved by all necessary corporate or organizational action of the Board of Directors of

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Parent and Grace, the ACC, the FCR and the Equity Committee, and shall be binding upon the parties and each of their respective successors and assigns to the fullest extent permitted by applicable law. The parties shall use their best efforts to incorporate the terms of this Term Sheet into a mutually agreeable plan of reorganization to be filed with the Bankruptcy Court as soon as possible.

V. Confidentiality.

The parties shall treat all negotiations regarding this Term Sheet as confidential. Neither the contents nor the existence of this Term Sheet shall be disclosed by any party, either orally or in writing, except to its directors, officers, employees, legal counsel, financial advisors, accountants and clients on a confidential basis until the Debtors have issued a press release announcing the terms and conditions contained herein. Notwithstanding the foregoing, the parties agree that this Term Sheet or the terms of this Term Sheet may be disclosed to the Official Committee of Unsecured Creditors and the Official Committee of Asbestos Property Damage Claimants. Grace will provide counsel to the ACC and counsel to the FCR an opportunity to review and comment on any press release relating to this Term Sheet prior to its issuance.

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AGREED TO AND ACCEPTED BY:

Dated: April 6, 2008

THE DEBTORS:

W. R. GRACE & CO., on behalf of itself and its subsidiaries and affiliates that are Debtors in the Chapter 11 cases

By: /s/ Fred Festa
Name: Fred Festa
Title: Chairman, President and Chief Executive Officer

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

By: /s/ R. Ted Weschler
Name: R. Ted Weschler
Title: Chair of the Committee

THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS:

CAPLIN & DRYSDALE, CHARTERED, on behalf of and in its capacity as counsel to the ACC

By: /s/ Elihu Inselbuch

Name: Elihu Inselbuch

THE FUTURE CLAIMANTS REPRESENTATIVE:

ORRICK, HERRINGTON & SUTCLIFFE LLP, on behalf of and in its capacity as counsel to the FCR

By: /s/ Roger Frankel

Name: Roger Frankel

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